29

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 218.

FREDERICK S. BLITZ, PLAINTIFF IN ERROR,

vs.

WILLIAM A. BROWN, WILLIAM A. KING, AND GEORGE A. STEPHENSON, COMPOSING THE FIRM OF WILLIAM A. BROWN & CO.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 12, 1867.

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1 The President of the United States to the Chief Justice and justices of the Supreme Court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between William A. Brown, William A. King, and George A. Stephenson, firm of William A. Brown & Co., plaintiffs, and Frederick S. Blitz, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and acoording to the law and custom of the United States should be done.

Witness the Honorable S. P. Chase, Chief Justice of the United States, this 5th day of June, in the year of our Lord 1867, and of the independence of the United States the 91st.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To the plaintiffs, below:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the District of Columbia, wherein Frederick S. Blitz is plaintiff, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness, D. K. Cartter, chief justice of the said Supreme Court of the District of Columbia.

D. K. CARTTER, *Ch'f Justice.*

I acknowledge service of this citation, June 5, 1867.

JNO. D. McPHERSON,
Att'y for Pl'ff.

2 DISTRICT OF COLUMBIA, *to wit:*

I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, certify that originals of which the following writings are true copies are on file and of record in my office, and that said originals together constitute the record of the proceedings of said

court in the cause of William A. Brown, William G. Wing, George A. Stephenson, comprising the firm of Wm. A. Brown & Co. *vs.* Frederick S. Blitz, No. 1,379, at law.

Witness my hand and the seal of said court this 22nd day of April, A. D. 1867.

3 In the Supreme Court of the District of Columbia, this 18th day of November, 1864.

Declaration, filed Nov. 18, 1864.

WILLIAM A. BROWN, WILLIAM G. WING, George A. Stephenson, comprising the firm of Wm. A. Brown & Co., *vs.* FREDERICK S. BLITZ. } No. 1359. At law.

The plaintiffs sue the defendant for money payable by the defendant to the plaintiffs for goods sold and delivered, and for money found to be due from the defendant to the plaintiffs on accounts stated between them. And the plaintiffs claim seven thousand six hundred and thirty-eight dollars and sixty-one cents, ($7,638 61,) according to the annexed particulars of demand, with interest, from the 31st day of January, 1864.

JNO. D. McPHERSON,
Attorney for Plaintiffs.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof, otherwise judgment.

JNO. D. McPHERSON,
4 *Attorney for Plaintiffs.*

Particulars of demand, filed Nov. 18, 1864.

Frederick S. Blitz, to Wm. A. Brown & Co., Dr.

1864.					
January.	For 329,834 ft.	lumber,	$20 50		$6,761 59
"	125,961	do	20 00		2,519 22
	45,222	do	28 00		1,266 21
	12,283	do	34 00		417 62
					$10,964 64
	By certificates and cash			$3,000 00	
	" 12,245 ft.	lumber,	$20 00	244 90	
	3,252	do	24 95	81 13	
					3,326 03
					$7,638 61

In the Supreme Court of the District of Columbia, the 18th day of Nov., 1864

Summons, issued Nov. 18, 1864.

WM. A. BROWN & Co., plaintiffs,
v.
FREDERICK S. BLITZ, defendant. } At law. No. 1359.

The President of the United States to the marshal for said district, greeting:

Summon the defendant in the above-entitled case to appear in said court on or before the first special term occurring twenty days after service of this writ, and answer the declaration herewith served, and warn him that on default of so doing, the plaintiff may proceed to judgment and execution at the trial term of said court next after said service. And do you return this writ into the clerk's office immediately after service, so indorsed as to show the time and manner of executing it; and if you cannot serve it within six months, the day of its issuance exclusive, then return it into said office for renewal.

Witness, D. K. Cartter, chief justice of said court.

[SEAL.] R. J. MEIGS, *Clerk*.

[NOTE.—That the special terms of the court commence on the first Tuesday of every month, except May, in which month they commence on the third Monday; and August, in which month there is no term of the court; and that the trial terms of the court commence on the first Tuesday of February, third Monday of May, and first Tuesday of November, when final judgments may be taken and execution awarded.]

Marshal's return.

Served copy of summons and declaration on def't, Feb. 6, 1865.
W. H. LAMON, *Marshal.*

In the Supreme Court of the District of Columbia, Circuit Court.

Plea in abatement, filed Nov. 21*st*, 1865.

BROWN & Co.
v.
BLITZ. } No. 136. Trial Calender, Nov. 1865.

The said Frederick S. Blitz comes into court and prays leave to file this his plea in abatement in the above cause, and says that he resides in the State of Pennsylvania, and has had imperfect opportunity to confer with his counsel, and was himself ignorant that the judgment in said plea named should be paid by him, or execution issue thereon against him upon said judgment before it could be

pleaded in bar or given in evidence, and therefore did not, untill the day on which this cause was set for trial, state to his said counsel that the said judgment had not been paid, and it is thus a surprise on him; and he says by leave of court, &c., that he purchased the lumber named in the account filed, and to recover the price of which this action is brought, in the month of , 1864, in the city of Washington, from one Freeman Orne, with whose agent he completed said purchase, in the presence and with the knowledge of said plaintiffs, or one of them; that he had no notice from said plaintiffs, or otherwise, that they were the owners of said lumber, or any part thereof, or that they had any lien thereon at the time of said
7 sale; on the contrary, the said Stevenson said he was desirous that said lumber be sold for as much as possible, so that the said plaintiffs might obtain out of the sale, from said Orne, certain advances they had made to him; that afterwards he paid to the said Freeman Orne the sum of three thousand dollars; and also sold to him, by his agent, several parcels of lumber, to be credited on account of said purchase so made by this defendant of said Orne. That afterwards, and some time in the month of May, or June, he is not quite sure which, he received from the said plaintiffs (and he believes the first time was in the last of June or about the first of July, 1864) notice that they were owners of part, and claimed a lien on the residue of said lumber, so purchased by him from said Orne. That prior to that, in the month of May, he received from plaintiffs notice that they claimed the proceeds of said sale, or some part thereof; and the said plaintiffs then proposed to meet this defendant in Washington, when they would have an order for the balance due, or to that effect. And this defendant further says, he was on his way to the city of Washington, when, at Port Deposit, in the State
8 of Maryland, on or about the 30 day of May, 1864, he was served with an attachment, issued out of the Circuit Court for Cecil county, in said State, at the suit of the Cecil Bank, which was levied by the sheriff of said county on the credit of said Freeman Orne, in the hands of this defendant, and this defendant was summoned as garnashee in said cause, to appear at the next July term, 1864, in the said court. And this defendant then came to the city of Washington, and then saw one of the said plaintiffs, to wit: Stevenson, of the firm of said Brown & Co., told him that the proceeds of said sale had been attached in his hands, stating to him the name of the court, and the parties, and that he would not pay said balance of said purchase-money untill it was decided in that case who was entitled to it; but as soon as that case was decided he was ready to pay.

And this defendant further in fact says that the proceedings in said attachment suit were all regular, and he brings it to court, and shows to the court a duly authenticated transcript of said attachment cause by which the same will appear.

And this defendant further in fact saith, that at the trial of said attachment cause he was examined under oath in open court
9 touching any credit in his hands due to said Freeman Orne,

and at the time he produced the account between himself and said Freeman Orne, exhibited in said record, and while he was so being examined in open court, he stated the fact and nature of the claim made by said plaintiffs, Brown & Co., upon the balance so apparently due to said Freeman Orne.

And this defendant further says he is informed, and believes it to be true, that after the said attachment was so as aforesaid laid in his hands, and after he had given the said plaintiffs notice thereof as aforesaid, the said plaintiffs, or one of them, was in the said county of Cecil before the time of the trial of the said attachment suit, and he avers that they did not furnish to him at any time any evidence to show that the said Orne was not the owner of the said lumber, or that they, the said plaintiffs, owned, or had any interest in the proceeds of said sale.

Wherefore he prays judgment that the said writ be quashed.

F. S. BLITZ.

Subscribed and sworn before me this 21st day of Nov., 1865.

A. B. OLIN, *Justice.*

10 In the Supreme Court of the District of Columbia, this 21 day of November, 1865.

Demurr, filed Nov. 21st, 1865.

W. A. BROWN & CO. }
v. }
F. S. BLITZ. }

The plaintiffs say the plea is bad in substance.

DAVIDGE & McPHERSON,
Pl'ff's Att'ys.

The said plea does not show that the plaintiffs in this cause were parties to the suit, in which judgment set up in the plea was recovered, ore are in any manner bound thereby, nor are any facts alleged from which the jurisdiction of the court which rendered the judgment to impair or in any manner affect the rights of these plaintiffs can be infered.

That the plea amounts to the general issue; that the judgment set forth in said plea does not purport to involve the matter in controversy in this cause, and the averments in the plea do not help it.

D. & Mc.

Special term, Nov. 7, 1867.

Proceedings before the Supreme Court of the District of Columbia, at a special term or Circuit Court for said District, com-
11 mencing on Tuesday, the seventh day of November, 1865.

TUESDAY, *November* 7, 1865.

The court commences its session at ten o'clock in the forenoon, Justice Olin presiding.

TUESDAY, *November* 21*st*, 1865.

The court resumes its session according to adjournment, Justice Olin presiding.

Proceedings before special term, Nov. 21, 1865.

WILLIAM A. BROWN, WILLIAM G. WING, & GEORGE A. STEPHENSON, firm of Wm. A. Brown & Co.,
vs.
FREDERICK S. BLITZ. } 1,359 Law, 126 Cal.

The defendant in proper person comes, and with leave of the court files his plea in abatement of the action, verified by his affidavit of the truth of the facts in said plea set forth, and thereupon the plaintiffs, by their attorneys, Messrs. Davidge and McPherson, comes and file their demurr to said plea, and the defendant, by his attorneys, Messrs. Bradley and Creswell, file his joinder in demurr, and after argument of said issue by said attorneys, as well for the plaintiffs as the defendant, because it appears to the court that said plea is bad in substance, therefore it is considered that the de-
12 fendant do answer further to the said writ and declaration of the plaintiffs by pleading in chief on or before the day of , 1865.

Appeal to gen'l term.

And from said judgment the defendant prays an appeal to the said court in general term, and said appeal is allowed upon his executing his appeal bond in the penalty of $100 dollars, for the prosecution of said appeal; whereupon the defendant comes and executes said bond with Joseph H. Bradley as his surety, and the same is approved.

Proceedings in general term, May 7, 1866.

Proceedings before the Supreme Court of the District of Columbia, holding a general term, commencing the first Monday of May, in the year 1866.

MONDAY, *May* 7, 1866.

The court commences its session in pursuance of the rule prescribing the times of holding the general term. Present: Justices Olin, Fisher, and Wylie.

General term, June 4th, 1866.

MONDAY, *June 4th*, 1866.

The court resumes its session according to adjournment. Present, Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

13 WILLIAM A. BROWN, WILLIAM G. WING, and George A. Stephenson, firm of William A. Brown & Co., plaintiffs, } 1,359 Law.
FREDERICK S. BLITZ, defendant.

And now again come here the parties aforesaid, by their attorneys aforesaid, and thereupon, because it seems to the court here that neither in the proceedings nor in the judgment of the Circuit Court is there any error, therefore it is considered that said judgment be in all things affirmed.

In the Supreme Court of the District of Columbia, the 6th day of March, 1865.

Plea, filed March 7th, 1865.

WM. A. BROWN & Co. *v.* FREDERICK S. BLITZ. } At law, No. 1,359.

The defendant says he never was indebted as alleged.

BRADLEY & BRADLEY,
For Def't.

In the Supreme Court of the District of Columbia.

14 *Rejoinder, filed M'ch 10th*, 1865.

WILLIAM A. BROWN & Co. *v.* FREDERICK S. BLITZ. } At law, No. 1,359.

The plaintiffs take issue upon the defendant's plea.

JNO. D. MCPHERSON,
Atty. for P'l'ff's.

Special Term, Feb'y 1867.

Proceedings before the Supreme Court of the District of Columbia, holding a special term, and Circuit Court for said district, commencing the first Tuesday, 5th day of February, 1867.

TUESDAY, *February*, 5, 1867.

The court commences the term by proclamation of the marshal, by order of the court; Chief Justice Cartter presiding.

TUESDAY, *November* 21*st*, 1865.

The court resumes its session according to adjournment, Justice Olin presiding.

Proceedings before special term, Nov. 21, 1865.

WILLIAM A. BROWN, WILLIAM G. WING, & George A. Stephenson, firm of Wm. A. Brown & Co., *vs.* FREDERICK S. BLITZ. } 1,359 Law, 126 Cal.

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FREDERICK S. BLITZ, defendant.

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In the Supreme Court of the District of Columbia, the 6th day of March, 1865.

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WILLIAM A. BROWN & Co. *v.* FREDERICK S. BLITZ. } At law, No. 1,359.

The plaintiffs take issue upon the defendant's plea.

JNO. D. MCPHERSON,
Atty. for P'lt'ffs.

Special Term, Feb'y 1867.

Proceedings before the Supreme Court of the District of Columbia, holding a special term, and Circuit Court for said district, commencing the first Tuesday, 5th day of February, 1867.

TUESDAY, *February*, 5, 1867.

The court commences the term by proclamation of the marshal, by order of the court; Chief Justice Cartter presiding.

Proceedings at special term, April 18, 1867.

TUESDAY, *April* 18, 1867.

The court resumes it session according to adjournment, Chief Justice Cartter presiding.

WILLIAM A. BROWN, WILLIAM G. Wing and George A. Stephenson, firm of Wm. A. Brown & Co., plaintiffs, *v.* FREDERICK S. BLITZ, defendant. } 1,359 Law; 43 Cal.

Come as well the plaintiffs by their attorneys Messrs. Mc-
15 Pherson & Davidge, as the defendant, by his attorneys Messrs. Bradley, and a jury of good and lawful men of this district, to wit: John H. Goddard, Samuel C. Wroe, Charles H. Lloyd, D. E. Irving, C. T. Bowen, Warren Lowe, Silas H. Moore, George H. Grant, Charles W. Pettit, John B. Ward, John Chapman, and Roday O'Brien, who being sworn to try the issue above joined, are respited till the meeting of the court to-morrow.

TUESDAY, *April* 23, 1867.

The court resumes its session according to adjournment, Chief Justice Cartter presiding.

Verdict.

WILLIAM A. BROWN, WILLIAM G. Wing, and George A. Stephenson, firm of Wm. A. Brown & Co., pl'tiffs, *v.* FREDERICK S. BLITZ, deft. } 1,359 Laws, 43 Cal.

And now again come here the parties aforesaid by their attorneys aforesaid and the same jury who were respited yesterday, and the said jury having received the instructions of the court, upon their oath say, they find the issue joined in favor of the plaintiff, and that the money payable by the defendant to the plaintiffs, by reason
16 of the premises, is the sum of six thousand five hundred and eleven dollars and seventy-two cents, to bear interest from May 15, 1864, besides costs.

Bills of exceptions filed.—Motion for new trial.

And thereupon the defendant files his two several bills of exceptions to the rulings and directions of the court on the trial, which are signed, sealed and made part of the record, and thereupon moves the court to set aside said verdict, and award him a new trial.

Defendant's first bill of exceptions.

At the trial of this cause the plaintiffs to maintain the issue on their part joined offered evidence tending to prove that in the fall of 1863 the plaintiffs, at the request of Freeman Orne, made advances upon certain cargoes of lumber then at sea, on their way to Washington city, D. C., and had the bills of lading for said lumber assigned to Middleton Bell, their agent at Washington, to be held and disposed of for their benefit; that at the time of making said advances and before the plaintiffs were engaged in the business as commission merchants in the city of New York; that part of the money so advanced and secured is in controversy in this suit; that said Bell as agent for the plaintiffs received the said cargoes on their arrival in the city of Washington, and took charge thereof, and sold parts
17 thereof to different parties, and among them to the defendant; that the lumber sold the defendant as aforesaid was delivered to him by the said agent of the plaintiff; that said Orne in part endeavored to negotiate the sale of the first lot of the lumber to the defendant mentioned in the account filed with the permission of the said agent, but that all said sales to the defendant were consumated by the said agent of the plaintiffs, except the first in the account sued on, as to which George A. Stephenson, one of the plaintiffs, being at the time of the sale thereof in Washington, was introduced by said agent to the defendant, as one of the owners of the lumber comprised in said sale, and said defendant was then informed by said agent, who had been before endeavoring to negotiate the sale of said lumber to said defendant, and that as one of the owners was present he and the defendant could make their own bargain, and that thereupon after some negotiations said bargain was struck on the terms charged in the account between said part owner and the defendant, and the sale was then entered by said agent in his book of sales; that the subsequent sales were made by the said agent of the plaintiffs at the prices charged, and duly entered in his book of sales.

18 That afterwards the defendant, in the presence of Orne, paid to the said agent of the plaintiffs a certificate of $5,000, receiving in change, after leaving the presence of Orne, certificates to the amount of $2,000, the said agent then declaring to the defendant that he did not wish Orne to know he had any money, and for said sum of $3,000 the defendant took the said agent's individual receipt, and the money received by the agent was paid by him to his pricipals and is credited on the account filed.

That the defendant never asked the said agent, nor the one of the plaintiffs present as aforesaid for the exhibition of the bills of lading assigned as aforesaid, but throughout recognized and acknowledged in all his dealing with said Bell, in relation to the lumber consigned to him by the plaintiffs, said Bell to be the agent of the plaintiffs.

That pending the measurment of the lumber mentioned in the first item of the account Orne interfered with the measurment on the ground that it was short, but at the instance of said agent and the defendant ceased to interfere.

That Orne never made acccount against the defendant for the lumber so sold and delivered.

19 That in the latter part of May, Stephenson, one of the plaintiffs, come to Washington to close up the sales to the defendant; that owing to the snow and bad weather there had been considerable delay in measuring the lumber, which was not concluded till the latter part of April; that said Stephenson at said city having received all the certificates of measurment made out from them, the account of the plaintiffs against the defendant, a copy of which is sued on, and exhibited the said account with the said certificates to the defendant, said account being made out in the name of the plaintiffs, and that the defendant admitted said account and certificate to be correct and the amount charged to be due the plaintiffs.

That when the first sale was concluded by Stephenson, one of the plaintiffs, he requested the defendant to make a payment on account, and that the defendant thereupon stated that there was due to him from the government certain certificates of indebtedness and a part of which he would transfer to the plaintiffs on account, but that the defendant on being called on to fulfil the said promise a day or two after informed said Stephenson that he had been unable to

20 obtain said certificates, and that it was then agreed that the terms of purchase should be 30 and 60 days if required by the plaintiffs, but that said terms were enlarged in consequence of the delay in obtaining the certificates of measurment as aforesaid.

The plaintiffs further offered evidence to prove their original advance on the lumber was $12,457 62, and for freight and expenses $11,285, and that the balance due on account of the consignments of said lumber was at the time of suit brought more than $8,293 38, besides commissions not charged up, as shown by the annexed account.

D. K. CARTTER, *Chief Justice.*

The plaintiffs having closed their proof, the defendant, to maintain the issue on his part, joined, offered, and gave evidence tending to show that the said Freeman Orne had a contract in the fall of 1863 to furnish certain lumber to the United States government at Geisboro, near Washington, and to supply said contract brought to the mouth of the Eastern Branch certain cargoes of lumber; that he failed to execute his contract, and had the said cargoes discharged, and the lumber piled on the canal wharf in the East Branch;

22 that a certain Middleton Bell was engaged with said Orne in the landing of said lumber, and said Orne and said Bell together and separately offered to sell the lumber so piled on said wharf to the defendant, a lumber merchant in the city of Washington, about the middle of January, 1864; the said Bell introduced to defendant Mr. Stephenson, one of the plaintiffs, as a member of the firm of William A. Brown & Co., and a negotiation again arose for the sale of said lumber, said Stephenson remarking he wished it to bring the highest price possiable, as his firm had made advances on it to Orne, and he wished Orne to get something out of it, after

they were paid, but not exhibiting to defendant any paper writing, showing either the amount of the advances he claimed or any lien on said lumber; that the negotiations resulting in a sale by said Bell to defendant, of which Bell took a memorandum, the lumber to be measured and delivered by Bell to defendant on said wharf, and the payments to be at thirty and sixty days after said delivery; that while said measurement and delivery were in progress, the same were stopped by Orne, and suspended, untill said Bell and the defendant were informed of it and interfered, and it was then
23 proseeded with, and this constitutes the first item in plaintiff's account; that after the said contract of sale to defendant, the said Orne sought another contract from the government, but being in default, as above stated, the said contract was taken in the name of said Bell, but for the use of said Orne, and the said Bell then offered to this defendant, as did also said Orne, part of another cargo of lumber some time in the month of March, 1864, and it was sold and delivered by said Bell to this defendant, and about that time Orne called on defendant for a payment on account of the lumber so bought by him, and defendant met said Orne and Bell at Orne's room at the National Hotell, and offered them a certificate for $5,000 out of which they should take $3,000, and give him the balance; that said Bell took up the said certificate, asked defendant to go with him to get the change, and when they got out of the room he gave the change to the defendant, stating he did not wish Orne to know he had any money, and defendant is credited with that sum on the account filed; that said Orne had another contract to supply certain lumber at the navy yard, Washington, and Bell had charge of the delivery of that lumber, and received the money therefor; that said Orne, in presence
24 of said Bell, contracted to sell and deliver to defendant a certain quantity of the lumber which had already been landed by Orne in the navy yard, together with another portion of an inferior quality of the same kind of lumber, which had been landed by Orne, on the Potomac in the city of Washington, and delivered the latter lumber to defendant, but Orne or Bell sold that portion which was in the navy yard to a third person, and these three sales constitute the whole of the demand of the plaintiffs in this action; that defendant never saw the plaintiffs or any of them from the time of the purchase made by him in January till the 30 May, 1864, nor did he receive from them or from any one in their behalf any claim or demand for the proceeds of the said contract of sale, or of either of them, until the receipt of the letter herewith contained of the 24th day of May, 1864, but in the meanwhile Orne had demanded a settlement and payment, which was delayed by reason of the delay in procuring the certificates of measurements; that on or about the 27th May, 1864, the said Stephenson being on his way to Washington in the cars, shewing a conversation between Jacob Tome, the president of the Cecil Bank, and a third party, in regard to said Orne,
25 and his moneyed transactions with them intespersed, and in the course of the conversation remarked that Orne was

very good; that he had large contracts with the government, and his house had advanced money to them, and he expected to get some from the defendant, who was indebted to Orne in a large sum for lumber purchased from him; that said Cecil Bank had at that time an attachment in the hands of the sheriff for certain lumber of Orne's at Port Deposit in said county, and on the next day the defendant arrived at Port Deposit, having been wrecked on a raft coming down the Susquehanna, and said Tome directed the attachment to be laid in his hands, which was done accordingly, and the same day this defendant procured a copy of said attachment, came to Washington, met said Stephenson, showed him the copy of said attachment, and on said Stephenson demanding payment for the lumber so, as aforesaid, bought by this defendant, he informed said Stephenson, that he would not settle with him at all without an order from said Orne, nor would he then, until the said attachment was settled; that he was ready to pay the money to whomsoever it was decided it was due; after that he did not see the plaintiffs, or either of them,
26 till after this suit was brought, nor was any demand made upon him for or by them except as contained in the letter of the
28 June and 14 July, 1864, hereto annexed, and 14 July, 1864.

The defendant further gave in evidence the record from the Circuit Court for Cecil county, in the tenth judicial circuit of the State of Maryland, in the case of the Cecil Bank *vs.* John J. Heekart and Frederick Blitz, garnashees of Freeman Orne, as follows, with proof, that the credits there attached were for the sales of the same lumber for which this action is brought, and none other, and rested.

And thereupon the defendant prayed the court to instruct the jury as set out in prayer No. 1.

Defendant's prayer, No. 1.

If the jury shall believe from the whole evidence that the lumber for the value of which this action is brought was at the time of the sale thereof to the defendant the property of Freeman Orne, and was sold by him or by his authority to the defendant, the plaintiffs are not entitled to recover in this action, although they may, from the said evidence, believe that at the time of said sale they, the
27 plaintiffs, had a lien thereon for advances of money made by the plaintiffs to said Orne to an amount greater than the value of said lumber.

Qualification by court.

Granted with the following qualification: Without the jury shall find further that the said Orne had previous to said sale to Blitz parted with the possession of said lumber to W. A. Brown & Co., and his wright to sell the same in consideration of an assignment thereof, and advances made thereon, in such case the jury will find the proprietary rights of Orne postponed to the title created in the pll't'fs by the assignment and delivery of the lumber.

Defendant's exception.

And the court refuses to grant the said instruction No. 1 as prayed, but grants the same with the qualification annexed thereto, and the defendant prays leave to except, and does except to the said refusal of the court, and to the said qualifications of his said prayer, and that the court will sign and seal this his first bill of exceptions, which is done accordingly, the 22 day of April, 1867.

[SEAL.] D. K. CARTTER, *Ch'f Justice.*

And the court thereupon further instruct the jury, as follows:

28 *Plaintiffs' 1st instruction given.*

If the jury shall find from the testimony that the plaintiffs advanced to Orne, in the fall of 1863, the amount of money claimed by them to have been advanced, and the several bills of sale and assignments of bills of lading were executed, and in pursuance of the advances and bills of sale, the lumber was consigned and delivered to Bell as the agent of the plaintiffs, subject to the sale and disposition of the plaintiffs for the purpose of liquidating such advances, and the lumber was sold by the plaintiffs or their agent to the defendant, the plaintiffs are entitled to recover, notwithstanding such sale may have been negotiated by Orne.

Plaintiffs' 2d instruction given.

If the jury find from the testimony that the several bills of sale and assignments were duly executed, and the lumber was delivered by the plaintiffs in pursuance of the bills of sale, the same conveyed the property in the lumber to the plaintiffs beyond the control of Orne, to the extent of the indebtedness constituting the consideration of the sale, and untill the same is satisfied such sale and delivery passed the property beyond the legal control of Orne untill they are satisfied.

29 *Instruction given by the court.*

The jury will not give to the judgment of the bank against Blitz the effect of liquidating any indebtedness of defendant's against plaintiffs on account of the purchase of the lumber in controversy. Its competency and pertinancy as [as] evidence is exclusively dependant upon the hypothesis that at the time of the sale to Blitz the lumber belonged to Orne, with the right to sell the same, in which case the attachment of the indebtedness by the creditor of Orne would be conclusive against Orne in his remedy against Blitz.

And the defendant prays leave to except, and does hereby except to the said instructions and to each of them, and prays the court to sign and seal this his second bill of exceptions, which is done this 22d day of April, 1867.

[SEAL.] D. K. CARTTER,
Chief Justice.

Defendant's prayer No. 2, marked D.—Granted.

And further, if the jury shall find from the evidence that the plaintiffs had a bill of sale from said Orne for part of said lumber, and that said bill of sale was given as a security only to protect the plaintiffs against loss for advances made by them to said Orne, on account of the lumber named in said bill of sale, and after said
30 bill of sale was executed they permetted said Orne to retain a control over and the order and disposition of said lumber, and the defendant purchased the same of said Orne, without notice of the said bill of sale or other notice of the said assignment to plaintiffs thereof, the plaintiffs cannot recover in this action for the lumber conveyed to them by said bill of sale.

Plaintiffs' exception.

To the giving which instruction the plaintiffs by their counsel except, and pray the court to sign seal and cause to be enrolled this his bill of exceptions, which is accordingly done this 22 of April, 1867.

[SEAL.] D. K. CARTTER,
Chief Justice.

Letters made a part of defendant's 1st bill of exceptions.—May 24, 1864.

NEW YORK, *May* 24, 1864.

F. S. BLITZ:

DEAR SIR; On rec't of this please telegraph us when you will meet our Mr. Stephenson, in Washington, to settle for the lumber we sold you last winter through Mr. Bell. We have his order for you to pay us, but he go on with Mr. S., if necessary. It has stood a
31 long time, and we now want it closed at once to close our lumber here.

Yours, truly,

WM. A. BROWN & CO.,
14 *Front St.*

Letter made a part of defendant's 1st bill of exceptions, dated May 24, 1864.

NEW YORK, *May* 24, 1864.

Mr. F. S. BLITZ:

DEAR SIR: We have written you at Columbia, and now address you at Washington, to know when our Mr. Stephenson shall meet you there, to settle for the lumber you bought of us last winter through Mr. Bell.

We have his order for you to pay us, but he can go on with Mr. S., if necessary; telegraph us, and Mr. Stephenson will meet you whenever you say.

Yours, truly,

WM. A. BROWN & CO.,
14 *Front St.*

Letter made a part of def't's first bill of exceptions, dated June 28, 1864.

NEW YORK, *June* 28, 1864.

Mr. F. S. BLITZ, *Columbia, Pa.:*

DEAR SIR: We have been expecting to hear from you ere this, as you told the writer when he left you in Washington you would
32 be there again in two weeks, and would let us know. We enclose copy of one invoice lumber bought of Maj. Orne, and one invoice we advanced the full cost on. The f'r't was 750 pr. M, so you can see there would be nothing due Orne, after deducting the heavy cost of lighterage and shrinkage in the measurement. Mr. Orne also owes us largely for other advances made on property, and for money loaned.

We trust you will be satisfied with these documents and our settlement, and remit us the amount due us per return of mail.

Yours, truly,

WM. A. BROWN & CO.

Record of judgmant in Maryland, a part of def't's first bill of exceptions.

STATE OF MARYLAND, *Cecil County, sct*:

At a Circuit Court for Cecil county in the sixth judicial circuit of the State aforesaid, begun and held at the court-house, in the town of Elkton, in and for Cecil county aforesaid, on the third Monday of July, (the eighteenth day of the same month,) in the year of our Lord anno Domini one thousand eight hundred and sixty-four.

Present, the Honorable John H. Price, circuit judge, James
33 B. Price, esquire, sheriff, Charles H. Haines, clerk.

Among others were the following proceedings, to wit:

THE CECIL BANK
v.
JOHN J. HECKART AND Frederick Blitz, garnashees of Freeman Orne.

Be it remembered that heretofore, to wit: on the twenty-eighth day of May, in the year of our Lord anno Domini one thousand eight hundred and sixty-four, a certain William Torbert, esquire, one of the justices of the peace of the State of Maryland, in and for Cecil county, pursuant to an act of assembly in such case made and provided, sent to the clerk of the Circuit Court here a certain affidavit made before him, with a note and protest thereto annexed, together with the warrant of him, the said William Torbert, under his hand and seal, which said draft, protest, affidavit, and warrant are in the words and of the tenor following, to wit:

$16,000. PORT DEPOSITE, *May* 13, 1864.

Pay to the order of Chas. H. Haines, cashier, sixteen thousand dollars, value received, and charge the same to account of

FREEMAN ORNE.

34 To BANK OF BLOOMFIELD, *Bloomfield, N. J.*

[One 50-c., 30-c., and 2-c. rev. stamps canceled.]

Endorsed: "Pay Drenel Winthrop & Co., or order. Chas. H. Haines, cashier."

And on the face of said note marked: "Accepted, payable May 20th, 1864, at Park Bank, N. Y. Henry Morris, cashier."

UNITED STATES OF AMERICA, *State of New York, ss*:

On the twentieth day of May, 1864, at the request of the holders, I, William, T. Farnham, a notary public duly admitted and sworn, dwelling in the city of New York, did present the original draft, hereunto annexed, to the paying teller at the Park Bank, in said city, and demanded payment, who refused to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest and by these presents do publicly and solemnly protest as well against the drawer and endorsers of the said draft as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages, and interest already incurred, and to be hereafter incurred, for want of payment of the same.

35 This done and protested at the city of New York aforesaid, in the presence of John Doe and Richard Roe, witnesses.

In testimonium veritatis.

[SEAL.] WM. T. FARNHAM, *Notary Public.*

[25-c. rev. stamp cancelled.]

STATE OF MARYLAND, *Cecil County, sct*:

Be it remembered that on this twenty-eighth day of May, in the year eighteen hundred and sixty-four, before me, the subscriber, a justice of the peace of the State of Maryland, in and for Cecil county, personally appeared Jacob Tome, a citizen of the State and county aforesaid, and president of the Cicil Bank, a body corporate and politic, located in the State and county aforesaid, and acting under an act of incorporation granted by the general assembly of said State, and made oath in due form of law that Freeman Orne is justly and bona fida indebted unto the said Cecil Bank in the sum of sixteen thousand and twenty-one dollars thirty-three cents lawful money of the United States, over and above all his accounts. And at the same time the said Jacob Tome, president of the Cecil Bank as aforesaid, produced to me the draft or bill of exchange on and by which the said Freeman Orne is so indebted, which is hereto annexed.

36 And at the same time the said Jacob Tome, president of the Cecil Bank as aforesaid, did also make oath that he doth know that the said Freeman Orne is not a citizen of the State of Maryland, and doth not reside therein.

In testimony whereof I do hereunto subscribe my name on the day and year aforesaid.

[5-c. stamp, cancelled.] WM. TORBERT.

To Charles H. Haines, esq'r, clerk of the Circuit Court for Cecil county:

Know you that I, the subscriber, a justice of the peace of the State of Maryland, in and for Cecil county, by virtue and in pursuance of the acts of the general assembly of Maryland, in such case made and provided, do hereby authorize and require you, on receipt of this warrant and the within oath of Jacob Tome, president of the Cecil Bank, and the annexed draft or bill of exchange on which the same is granted, to issue an attachment against the lands and tenements, goods and chattels, rights and credits, of the said Freeman Orne, to answer unto the said Cecil Bank the sum of sixteen thousand and twenty-one dollars thirty-three cents lawful money of the
37 United States, in the said oath specified, and costs of the attachment, according to the acts of assembly of Maryland aforesaid; and this warrant shall be your sufficient authority therefor.

Given under my hand and seal this twenty-eighth day of May, eighteen hundred and sixty-four.

[SEAL.] WM. TORBERT.

And thereupon, by virtue of the said warrant and in pursuance of the act of assembly aforesaid, the said "The Cecil Bank," by William J. Jones, esquire, its attorney, prosecuted and sued forth out of the Circuit Court here the writ of the State of Maryland of attachment to the sheriff of Cecil county aforesaid, directed in the words and of the tenor following, to wit:

CECIL COUNTY, *sct*:

The State of Maryland to the sheriff of Cecil county, greeting:

Whereas on the 28th day of May, in the year of our Lord one thousand eight hundred and sixty-four, a certain William Torbert, esquire, one of the justices of the peace in and for the county aforesaid, in pursuance of article 10 of the Maryland code of public gene-
38 ral laws, issued his warrant to the clerk of the Circuit Court for Cecil county, thereby requiring the said clerk to issue the writ of the State of Maryland of attachment against the lands, tenements, goods, chattels, and credits of a certain Freeman Clark, and the proofs on which the said warrant was granted having been received, therefore you are hereby commanded to attach, seize, take, and safe keep the lands, tenements, goods, chattels, and credits of the said Freeman Orne, which shall be found in your bailwick, to the value of as well the sum of sixteen thousand twenty-one dollars thirty-three cents current money, as the costs and charges which may or shall accrue in the premises; and when you have the same so attached, or any part thereof, the same in your custody safe keep, so that you have the same before the Circuit Court for Cecil county, to be held at Elkton on the third Monday of July next, then and there to be condemned according to the code of public general laws aforesaid, to and for the use of the Cecil Bank, unless he, the said Freeman Orne, by himself or his attorney, shall appear or answer unto the said the Cecil

Bank in a plea of trespass on the case, &c., according to law.
39 You are likewise commanded to make known to each person or persons in whose hands or possession the said goods, chattels, and credits so attached are, if to him or them it shall seem meet to be and appear on the day and at the place aforesaid before the said Circuit Court, to show cause why such goods, chattels, and credits so attached as aforesaid should not be condemned and execution thereof had and made as in other cases of recoveries and judgments given in courts of record, according to the directions of the code of public general laws aforesaid, and that you make appear unto the said Circuit Court at the place and on the day aforesaid in what manner you shall execute this writ; and have you then and there this writ.

Witness the Honorable John H. Price, judge of the said court, the ninth day of April, anno Domini 1864.

Issued the twenty-eighth day of May, anno Domini 1864.

CHARLES H. HANIES, *Clerk.*

[50-cent stamp, cancelled.]

And the said "The Cecil Bank," by its attorney aforesaid, at the time of suing forth the foregoing writ of attachment, prosecuted and sued forth the writ of the State of Maryland of summons,
40 directed to the sheriff of the county aforesaid, in the words and of tenor following, to wit:

Cecil County, ss:

The State of Maryland to the sheriff of Cecil county, greeting:

You are hereby commanded to summon Freman Orne, if he shall be found in your bailiwick, to appear before the Circuit Court for Cecil county, to be held at the court-house in Elkton, in and for Cecil county aforesaid, on the third Monday of July next, to answer unto "The Cecil Bank" in a plea of trespass on the case, and so forth; and have you then and there this writ.

Witness the Honorable John H. Price, judge of the said court, the ninth day of April, anno Domini 1864.

Issued the 28th day of May, anno Domini 1864.

CHARLES H. HANIES,
Clerk.

[SEAL OF COURT.]

[50-cts. rev. s'p, cancelled.]

And thereupon the said "The Cecil Bank," by its attorney aforesaid, files in court here the following short note, to wit:

In the Circuit Court for Cecil county.

Attachment.

THE CECIL BANK
vs.
FREEMAN ORNE.

41 This suit is instituted to recover the sum of sixteen thousand and twenty-one dollars and thirty-three cents, due and owing

from the defendant to the plaintiff upon a certain draft or bill of exchange, bearing date the thirteenth day of May, eighteen hundred and sixty-four, for sixteen thousand dollars, drawn by the said defendant, payable to the order of Charles H. Haines, cashier, upon the Bank of Bloomfield, and accepted by Henry Moore, cashier of said Bank of Bloomfield, payable May twentieth, eighteen hundred and sixty-four, at Park Bank, New York.

The clerk will issue attachment in this case, and send copy of short note to be set up at the court-house door.

W. J. JONES,
Plaintiff's Att'y.

1 copy of which said short note was made and sent with the writ aforesaid to the sheriff of the county aforesaid, thereon endorsed, "To be set up at the court-house door."

At which said third Monday of July, to wit, in the year of our Lord, anno Domini, one thousand eight hundred and sixty-four,
42 being the return day of the foregoing writs, comes into the Circuit Court here the said "The Cecil Bank," by its attorney aforesaid, and the sheriffs of Cecil county aforesaid, was in form aforesaid directed, makes return of the said writ to the court here thus endorsed, to wit:

"Attached the rights and credits of Freman Orne, to the amount of debt, interest and costs, in the hands of John J. Hackart and Frederick Blitz and summoned them as garnashees.

"J. B. PRICE, *Sheriff.*"

And the sheriff aforesaid, to whom the writ of summons was in form aforesaid directed and to whom the copy of the said short note was in manner aforesaid sent, makes return of said last-mentioned writ to the court here thus endorsed, to wit:

"Non est.

"J. B. PRICE, *Sheriff.*"

And the said Freeman Orne, although called, comes not, and the said Frederick Bletz and John J. Hackart, in whose hands the rights and credits of the said Freeman Orne were so as aforesaid attached, being called, come into the Circuit Court here in their proper persons.

43 And the said Frederick Bletz, in his proper person, says that he cannot deny but that he hath of the rights and credits of the said Freeman Orne in his hands to the value of six thousand five hundred and thirty-six dollars and seventy-eight cents, nor but the said "The Cecil Bank" ought to have condemnation thereof, and files in court here an account and statement in form following, to wit:

Frederick S. Bletz,

In account with Freeman Orne.

251,756 feet hemlock lumber.
12,587 " off 5 p'r cent. for samples.

239,169	" at $20 56-100	$6,503 66	
85,042	" hemlock at $20	1,700 84	
40,786	" " refuse from Brig Sea Lion, 15	611 52	
45,222	" 5-4 and 6-4 cullings, 32	994 88	
11,228	" flooring, 34	383 79	
			$10,194 59
4 mos. warfage paid city, &c		$212 96	
½ counting and hauling		114 22	
3,252 feet hemlock lumber, 24 25/100		81 13	
About 10,000 feet hemlock lumber, 24 98/100		249 50	
Cash and cert'f		3,000 00	
			3,657 81
Balance due			$6,536 78

44 ELKTON, *July* 18, 1864.

I hereby acknowledge that the above am't of $6,536 78 is the balance in my hands due to Freman Orne for lumber, according to the above statement, as near as I can fix the am't at this time.

F. S. BLETZ.

And the said John J. Heckert, in his proper person, says that he cannot deny but that he hath of the rights and credits of the said Freeman Orne in his hands to the value of nine hundred and sixty-eight dollars and thirty cents, nor but that the said "The Cecil Bank" ought to have condemnation thereof, and files in court here an account and statement in form following, to wit:

PORT DEPOSIT, *May* 12*th*, 1864.

Mr. Freeman Orne,

By J. J. Heckart, Cr.

By cash of A. J. Fitch & Boyton for one spare raft sold them by order of F. Orne $1,294 00

F. Orne,

To J. J. Heckart, Dr.

	May 12th.	To inspection of spar raft	$3 00
45	" "	" cash paid his order in favor of B. S. Sheald, pilot.	$80 00

May 12.	To cash paid Barnett and pilots for running 5 timber and spar rafts from Beach Bottom to port	150 00	
" 28th.	Cash paid W. S. Crawford, Orne's clerk	20 00	
	Cash paid holding 1 spar raft	8 00	
	5 p'r coms. on sale	64 70	
			$325 70
	Balance due		$968 30

To the honorable the judge of the Circuit Court for Cecil county :

The undersigned respectfully returns that he has in his hands assetts belonging to F. Orne, amounting to nine hundred sixty-eight dollars and thirty cents, subject to an attachment issued by Jacob Tome against said Orne, and levied in the hands of the undersigned on the 30th day of May, 1864.

Respectfully yours,

J. J. HACKART.

Whereupon the said "The Cecil Bank," by its attorney aforesaid, prays that the said rights and credits of the said Freeman Orne, so as aforesaid attached and confessed to be in the hands of the
46 said Frederick Bletz and John J. Heckart, may be condemned according to the act of assembly in such case made and provided.

Therefore it is considered by the Circuit Court here, this twenty-second day of July, in the year of our Lord one thousand eight hundred and sixty-four, that the rights and credits of the said Freeman Orne, so as aforesaid attached and confessed to be in the hands of the said Frederick Bletz and John J. Heckart, be condemned in their hands according to the said act of assembly, towards satisfying unto the said "The Cecil Bank" the damages, costs, and charges aforesaid in the said writ of attachment specified.

And it is further considered by the said court, that the said "The Cecil Bank" recover against the said Freeman Orne the sum of thirteen dollars and thirty-one cents for its costs and charges, by it expended in this behalf.

And afterwards, to wit, on the tenth day of October, in the year last aforesaid, the following order was filed, in the words and of the tenor following, to wit :

47 THE CECIL BANK
v.
FREEMAN ORNE.

Received of J. J. Heckart nine hundred and sixty-eight dollars and thirty cents, in full of the judgment against said J. J. Heckart as

garnashee of said Freeman Orne, and the clerk is hereby authorised to mark the judgment against said J. J. Heckart satisfied.

W. J. JONES,
Pl'ff's Attorney.

Test :

CHARLES H. HAINES,
Clerk of the Circuit Court for Cecil County, Maryland.

STATE OF MARYLAND *Cecil County, sct :*

I, Charles H. Haines, clerk of the Circuit Court for Cecil county, Maryland, do hereby certify that the foregoing is a true transcript taken and made from the record and proceedings of the Circuit Court for Cecil county.

In testimony whereof, I have hereto set my hand and affixed the seal of the Circuit Court for Cecil county, on this eleventh day of February, anno Domini one thousand eight hundred and sixty-five.

[SEAL OF COURT.] CHARLES H. HAINES,
Clerk of the Circuit Court of Cecil County, Maryland.

48 STATE OF MARYLAND, *sct :*

I, John H. Price, circuit judge of the ninth judicial circuit of the State of Maryland, comprising the counties of Harford and Cecil, do hereby certify that the foregoing attestation of Charles H. Haines, clerk of the Circuit Court for Cecil county, is in due form and by the proper officer.

Given under my hand this thirteenth day of February, anno Domini one thousand eight hundred and sixty-five.

JOHN H. PRICE.

[5-cent rev. stp, cancelled.]

STATE OF MARYLAND, *Cecil County, sct* :

I, Charles H. Haines, clerk of the Circuit Court for Cecil county, Maryland, do hereby certify that the Honorable John H. Price, by whom the aforegoing attestation was made, and who has thereto subscribed his name, was, at the time thereof, and still is, circuit judge of the ninth judicial circuit of said State, and as such, judge of the Circuit Court for Cecil county.

In testimony whereof, I hereunto set my hand and affix the seal of the Circuit Court for Cecil county, on this thirteenth day of
49 February, anno Domini 1865.

[SEAL OF COURT.] CHARLES H. HAINES,
Clerk of the Circuit Court for Cecil County, Maryland.

General term.—May, 1867.

Proceedings before the Supreme Court of the District of Columbia, in general term, commencing the first Monday, the 6th day of May, in the year of our Lord one thousand eight hundred and sixty-seven :

MONDAY, *May* 6, 1867.

The court commenced the term by proclamation by the marshal; present, Justices Olin, Fisher, and Wylie.

Proceedings in Supreme Court, general term, May 24th, 1867.

Final judgment.

FRIDAY, *May* 24, 1867.

The court resumes its session according to adjournment; present, Justices Olin, Fisher, and Wylie, presiding.

WILLIAM A. BROWN, WILLIAM G. WING, and George A. Stephenson, firm of William A. Brown & Co., pl'tiffs, *v.* FREDERICK S. BLITZ, defendant.	1,359.—At law.

50 And now come here the parties aforesaid, by their attorneys aforesaid, and because it seems to the court that there is no error in the record and proceedings of the Circuit Court, therefore it is considered that the defendant's motion to set aside the verdict aforesaid, and award him a new trial, be overuled; and that the plaintiffs recover against the defendant the sum of six thousand five hundred and eleven dollars and seventy-two cents, to bear interest from May 15, 1867, for money payable by the defendant to the plaintiffs, in manner and form aforesaid found, and $ for their costs of suit, and that they have execution therefor.